

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 December 2005

Case No.: 2005-LDA-35

OWCP No.: 02-138902

IN THE MATTER OF

CELESTER HALL,
Claimant

vs.

SERVICE EMPLOYERS INTERNATIONAL,
Employer

and

**AIG WORLDSOURCE/INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA**
Carrier

APPEARANCES:

LEWIS FLEISHAM, ESQ.,
On behalf of Claimant

**JOHN L. SHOUEST, ESQ.,
BRIAN WHITE, ESQ.,**
On behalf of Employer/Carrier

Before: CLEMENT J. KENNINGTON
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), 33 U.S.C. § 901, et seq., and its extension, the Defense Base Act (DBA), 42 U.S.C. § 1651 et. seq., brought by Celester Hall (Claimant) against Service Employers International (Employer) and AIG Worldsource/Insurance Company

of the State of Pennsylvania (Carrier). The issues raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held on May 31, 2005 in Houston, Texas.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant testified and called live witnesses Bema Johnson-Hall (Claimant's wife) and Jenny Stegent and introduced 124 exhibits which were admitted, including medical records from Bagram AFB, Afghanistan, Central Texas Rehabilitation Medicine (Dr. Kelly Lobb), Quest Diagnostic, Brown Animal Hospital, Methodist Hospital, Kindred Hospital, St. Joseph Regional Rehabilitation Center (Dr. Greg LeBleu), Landstuhl Regional Medical Center, U.S. Army 325th Combat Support Hospital; medical and billing records of Drs. Ralph Young, Newton Coker; narrative report of Dr. Peter Marco; depositions of medic Charlie Dusha and Drs. LeBleu, Lobb, Coker, Daniel Musher, George Burnazian and Danny Fairbanks; expert reports of William J. Kramberg, Ginny Stegent, various articles relative to meningitis and invasive pneumococcal disease, cochlear implants; Claimant's personnel, payroll, and employment records; various DOL records; section 7 demand letter and Employer discovery responses.¹ Employer introduced 80 exhibits which were admitted including Claimant's incident/accident report dated November 30, 2004, Claimant's personnel file and earnings records; depositions of Charles Dusha, Drs. Greg LeBleu, Kelly Lobb, Daniel Musher, George Burnazian, and Newton Coker, various medical and billing records of Claimant as noted above.

Post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced my observation of the witness demeanor and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

I. STIPULATIONS

At the commencement of the hearing the parties stipulated and resolved most issues. Based upon those stipulations (CX-117; Tr. 6-12) I find:

1. The instant claim comes within the jurisdiction of the Act and the DBA.

¹ References to the transcript and exhibits are as follows: trial transcript- Tr.____; Claimant's exhibits- CX-____, p.____; Employer exhibits- EX-____, p.____; Administrative Law Judge exhibits- ALJX-____; p.____.

2. Claimant's illness became manifest on or about November 30, 2004, during the course and scope of his employment with Employer while Claimant was working at Bagram Air Force Base in Afghanistan

3. An Employer/Employee relationship existed at the time when Claimant's illness became manifest.

4. Employer was advised of the illness on or about November 30, 2004.

5. Employer filed a notice of controversion on January 28, 2005

6. An informal conference was held on March 3, 2005.

7. Claimant's average weekly wage at the time of injury was \$739.22 with a corresponding compensation rate of \$492.81.

8. Claimant's illness consisted on pneumococcal pneumonia and bacterial meningitis which resulted in a complete binaural hearing loss, third nerve palsy affecting Claimant's vision, vestibular dysfunction or balance disorder affecting Claimant's equilibrium, edema and stroking secondary to bacterial meningitis, and urinary incontinence.

9. Claimant is entitled to temporary total disability benefits since November 30, 2004.

10. Claimant is entitled to reasonable and necessary medical benefits due to his illness.

11. Employer/Carrier has paid no disability or medical benefits to date

II. ISSUES

The following unresolved issues were presented by the parties:

1. What constitutes reasonable and necessary medical benefits under Section 7 of the Act.

2. Interest and Section 28 Attorney's fees.

III. STATEMENT OF THE CASE

A. Chronology:

Claimant is a 54 year old male employed by Employer in August 2004 to work as a contract truck driver on the Bagram Air Force Base in Afghanistan. There he transported water off base and delivered fuel on base (CX-67,69). On November 30, 2004, after working for 2 ½ months, Claimant was discovered by medic Charles Dushsa in an unconscious state on the floor of his hut. Claimant was transported to the 325 CSH EMT where he was sedated, intubated, ventilated and prepared for transport on December 1, 2004 to Landsdul Regional Medical Center in Germany in critical condition (CX-2,3).

There he was diagnosed with streptococcal meningitis and transferred to Methodist Hospital in Houston where he required persistent mechanical ventilation and was transferred to Kindred Hospital December 22, 2004 for ventilator management and diagnosed with bilateral third nerve palsy and bilateral hearing loss. (CX-127, 129) On January 19, 2005 he was transferred to St. Joseph Regional Rehabilitation Center in Bryan, Texas for therapy.

Claimant remained at St. Joseph's for about a month after which he was discharged to his home. 2 The discharge diagnosis read as follows: status post treatment for streptococcal meningitis, bilateral third nerve palsy secondary to meningitis, bilateral neurosensory hearing loss secondary to meningitis³, (intubation, status post PEG tube placement for long term feeding, urinary retention requiring intermittent catheterization, history of peptic ulcer disease.(CX-50). As of March 2, 2005 Dr, Lobb of Central Texas Rehabilitation examined Claimant found him to be suffering from stroke, bilateral 3rd nerve palsy and bilateral deafness and currently getting home health physical therapy 3 times a week, scheduled for a cochlear implant evaluation with a need for assistance in lower body dressing, toileting, bathing using a rolling walker and having trouble with balance. (CX-51).

2 Dr. LeBleu treated Claimant at St. Joe's hospital and referred Claimant to Dr. Kelly Lobb, an outpatient rehabilitation doctor who has coordinated a lot of Claimant's care. Drs. Musher and Berenaisian are infectious disease physicians who provided information about conditions in Bagram AFB that could have caused or aggravated Claimant's condition.

3 Bilateral hearing loss and bilateral vestibular dysfunction was confirmed by Dr, Coker on February 14, and 2005 and March 14, 2005 (CX-58, 61).

On a follow up visit of March 29, 2005, Dr. Lobb referred Claimant for wound care and possible debridement as well as ophthalmological and urological evaluation. On April 1 2005, Claimant was seen by urologist, Dr. Ralph Young who found significant urinary retention, urinary tract infection and the need for intermittent catheterization. (CX- 52).

B. Testimony of Claimant and his wife, Bema Johnson Hall

At the hearing Claimant because of deafness testified by means of a video screen. Claimant testified that he has an 11th grade education having worked mostly in construction and truck driving. On August 5, 2004 Claimant signed a contract with Employer effective September 9, 2004. Claimant arrived in Afghanistan on September 10, 2004 (Tr. 56-63). Prior to being hired Claimant underwent a thorough physical and passed it having no hearing, vision, or nerve palsy problems (Tr. 64). Now Claimant suffers from third nerve palsy, hearing loss, double vision, balance problems requiring use of a walker, urinary incontinence requiring medication and use of Depends (Tr. 65-70). Claimant cannot drive now but did drive trucks while employed in Afghanistan (Tr. 72-74).

While driving trucks in Afghanistan, Claimant worked around sick and coughing Afghans. He also lived in quarters around sick persons (Tr. 77, 78). Work conditions were quite dusty (Tr. 79). Claimant was unable to recall much of his treatment but did recall being treated by Dr. Coker for hearing loss (Tr. 82, 83). Claimant testified that he had physical therapy and benefited from it and was being treated by Dr. Young for bladder problems and needed his wife to catheter himself daily since leaving the hospital on February 17, 2005 (Tr. 84) Claimant's wife takes care of his medical needs in the morning before she goes to work and then at lunch time and drives him to medical appointments (Tr.85, 86).

On cross Claimant admitted he could get out of bed in the morning by himself, shower by himself, and use the bathroom without help. However he needs assistance for about 20 to 30 minutes from his wife to dress himself, about 15 minutes of help from her to catheter himself and 15 to 20 minutes help for meal preparation. (Tr. 93-95).

Ms. Hall testified about her husband's former work and his eventual transfer back to Methodist Hospital on December 5, 2004 where he stayed until December 22, 2004 and then was transferred to Kindred Specialty Hospital. Claimant stayed at Kindred until mid January, 2005 when he was transferred to St. Joe's Hospital where he remained until discharged on February 17, 2005 (Tr. 105, 106). Concerning his medical care Claimant's group health insurer has picked up some but not all medical expenses. Claimant has had to pay for prescriptions since April 2005 (Tr. 107,108)

Claimant's current medical problems include a burning sensation in both feet, numbness in both hands, inability to walk without a walker, incontinence with a need for catheterization done by his wife (Tr. 110-113). Claimant needs daily attendant care which is being provided by his wife which includes clothes and food preparation for breakfast, lunch and dinner. In addition to these jobs his wife holds down three jobs. (Tr. 114,115). His wife also changes Claimant's bandages on a daily basis. (Tr. 121). Claimant needs but does not have the funds to pay for a raised toilet seat, grab bars, sanitary wipes, catheter kits.

C. Testimony of Ginny Stegent⁴

Ms Stegent is the owner of Med Legal Services, Inc, working as a rehabilitation consultant/case manager and certified life care planner from 1992 to present with professional nursing licenses from the states of Tennessee, Arkansas, Louisiana and Texas. She has worked as Area and Case Manager for American International Health & Rehabilitation Services in Houston, Texas from 1987-1992 and served as Director of Nursing at Twelve Oaks Hospital in Houston and Head Nurse of the Coronary Care Unit at Tulane University Medical Center in New Orleans (CX-121). As a life care planner she is responsible for determining long term care needs of persons with medical disabilities together with the costs of such services (Tr. 133). Ms. Stegent was originally contacted by Employer and Claimant to develop a life care plan for Claimant (Tr. 135).

Ms. Stegent testified that after reviewing the medical records and depositions of Dr. Lobb, profound bilateral deafness, status post CVA, bilateral third nerve palsy, urinary retention intermittent catheterizations, urinary tract infections, a balance impairment and left sided weakness requiring a rolling walker and wheelchair for ambulation, vision disturbance, and an overall decrease in strength and endurance requiring assistance with most of daily living activities (CX-120). As a result of his injuries Claimant will continue to require extensive medical follow up, monitoring and follow up of the cochlear implant. According to Ms. Stegent Claimant has a need for attendant care which runs about \$10.00 per hour plus \$25.00 to \$30.00 per hour for LPN care of catheter and dressings over peg site (Tr. 149-150), physical and vestibular therapy (Tr. 151,152).

C. Testimony of Drs. Greg LeBleu, Kelly Lobb, Newton Coker

Dr. LeBleu, a specialist in rehabilitation medicine since 1995, currently practicing at St. Joseph's Regional Rehabilitation Center in Bryan, Texas where he is medical director, and treating physician for Claimant, testified Claimant was an inpatient at St. Joseph's from January 19, 2005 through February 17, 2005. Upon admission Claimant was very weak, deconditioned and suffered from 3rd nerve palsy (ocular nerve palsy),

⁴ The record incorrectly spelled her last name as Steengent.

bilateral hearing loss, and balance impairment as a result of pneumococcal meningitis. Upon discharge Claimant's vision had improved with partial lid opening of both eyes. Claimant had complete bilateral hearing loss and subsequently cochlear implants which were found to necessary to treat this condition. In addition his balancing was improving. However he was clearly unable to resume his former work and needed continued rehabilitation with the ability to live on the first floor of a living unit. Claimant was also depressed but upon discharge his mood had improved. Claimant was not at maximum medical improvement. (CX-110).

Dr. Lobb, also a specialist in rehabilitation medicine since 2001, currently practicing at Central Texas Rehabilitation as an outpatient rehabilitation specialist, testified he began treating Claimant on February 17, 2005 upon his discharge from St. Joseph's on a referral from Dr. LeBleu. Dr Lobb upon examination found Claimant with bilateral deafness, bilateral and 3rd nerve palsy. By March 2, 2005 Claimant still had balance problems and difficulty putting his pants on and going to the bathroom and showering and needed a rolling walker to walk. Claimant clearly could not perform his former truck driving duties and had problems with double vision. Dr. Lobb recommended physical therapy to improve balance plus a home health attendant and wound care 3 times a weak for the PEG site used to feed him when he had a tracheotomy. In addition he needs an urologist for further work up of urinary incontinence, an ophthalmologist for workup of 3rd nerve palsy, and a neurologist for neuropathy (CX-111).

Dr. Coker, a specialist in otolaryngology at Baylor College of Medicine, examined Claimant's ears on February 14, 2005, reviewed a previous audiogram of January 17, 2005, and found complete loss of hearing in both ears secondary to meningitis. Subsequent testing showed a loss of both vestibular and auditory functioning. Dr. Coker performed cochlear implants on April 22 2005 and recommended vestibular rehabilitation. (CX-112).

IV. DISCUSSION

A. Contention of the Parties

Claimant contends prior to the formal hearing Carrier refused all written demands for Section 7 coverage as set forth in letters dated February 25, 2005, April 18, 2005, and May 19,2005, which demands were reasonable and necessary medical expenses and based upon the recommendations of Drs. LeBleu and Coker. These demands include: (1) part time home health care attendant; (2) prescriptions not paid for by Employer/Carrier; (3) cochlear implants and external devices by and through Dr. Coker; (4) vestibular rehabilitation as recommended by Dr. Coker; (5) opthamolgist referral as recommended by Dr. Coker for evaluation of 3rd nerve palsy; (6) urological examinations and treatment by Dr. Young; (7) continued physical rehabilitation; (8)mileage payments for medical

care claimant has obtained in Houston; (9) payment for disposable incontinence undergarments Claimant must have in order not to soil himself; (10) reimbursement to the group health care carriers for medical care they paid for at Kindred Hospital, St. Joseph's Rehabilitation Center, Methodist and other health care providers; (11) payment of outstanding medical bills related to Claimant's medical problems associated with his meningitis as described above; (12) payment for other medical care recommended by Ms. Ginny Stegent.

In support of its assertions Claimant contends that Employer/Carrier is responsible for past and future home health costs related to his injury citing 33 U.S.C. § 907(a), 20 C.F.R. § 702.401, *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184, 187 (1988); *Barbour v. Woodward & Lothrop, Inc.* 16 BRBS 300, 303 (1984); *Miranda v. Excavation Construction Inc.*, 13 BRBS 882, 887 (1981); *Falcone v. Generala Dynamics Corporation*, 21 BRBS 145 (1988). Claimant contends that prescriptions prescribed by Claimant's treating physicians are medications covered by 33 U.S.C. § 907(a), 20 C.F.R. § 702.401. Likewise cochlear implants qualify as surgical and prosthetic devices covered by the same provisions and are presumed reasonable and necessary and in accord with Dr. Coker's uncontradicted testimony. Vestibular and physical rehabilitation, ophthalmological and urological testing and treatment were also covered under the same provisions as medical services deemed reasonable and necessary per Drs. Coker, LeBleu and Lobb's sworn testimony. Travel expenses and disposable undergarments are covered under 33 U.S.C. § 907(a), 20 C.F.R. § 702.401 as other medical services, apparatus or supply.

Claimant also contends Employer is responsible for medical expenses paid by Claimant or Claimant's group health insurer and for payment of outstanding medical bills plus interest related to Claimant's treatment of meningitis and its side effects citing *Ion v. Duluth, Missabe and Iron Range Railway Co.* 31 BRBS 75 (1997). In addition Claimant contends employer should be responsible for reasonable and necessary medical expenses identified by the parties life planning expert and registered nurse Ginny Stegent including possible right cochlear implant, further evaluations by ophthalmologists, urologist, neurologist and neuropsychologists, physical and vestibular rehabilitation, individual and family counseling, medications, purchase of a wheel chair and personal hygiene products, home health care requiring an LPN at the rate of \$25.00-\$30.00 per hour. Due to the complexity of Claimant's injuries Employer should hire an independent case manager.

Employer agrees that Claimant is entitled to reasonable and necessary medical care and benefits but that Claimant's treating physicians are in the sole position to prescribe such treatment and that any disputes should be resolved by the District Director. Further Claimant's wife is not entitled to reimbursement for care provided to Claimant. Employer argues that to the extent Claimant requires on-going treatment such supervision is properly vested with the District Director and not this court citing 33 U.S.C. § 907 (b),

McCurley v. Kiewest Company, 88 BRBS 2113 (1989). Such supervision includes the submission of medical reports, determination of the necessity, character and adequacy of medical care, charges for medical treatment, change of physicians, hospitals or other treatment (*See Roulst v. Marco Construction Company*, 15 BRBS 443 (1983) *Loxley v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 215 (1990).

Employer argues that the specific medical care needed by Claimant was not addressed at the informal conference because Claimant's condition was in a fluid or evolving state and that an order from the undersigned would be impossible because of such a condition. More specifically Dr. Lobb, Claimant's rehabilitation doctor, although at one time recommending a home health care attendant, admitted at CX-111, pp.36,37 that he did not have to have one. Further Claimant did not specifically request authorization for treatment by his wife. If his wife is entitled to compensation it should be at the rate of \$10.00 per hour established by Ms. Stegent for home health care attendant services in accord with *Carroll v. M Cutter Company and Liberty Mutual Insurance Co.*, 2003 WL 22491689 (BRBS) requiring payment of family members at a reduced for services employer is required to pay. Further Claimant should be required to document hours spent in such services with Employer limited to paying no more than 4 hours per day and not required to pay for time Claimant was not at home or an inpatient at a hospital or in a doctor's office.

Regarding payment for prescriptions, cochlear implants, vestibular and physical rehabilitation, ophthalmological evaluation, urological examination and treatment, mileage payments, disposable undergarments payments, reimbursement to group health care providers and Claimant for payment of medical services, and payment of outstanding medical bills, Employer contends such issues are moot since it has agreed to such payment. Employer objects to payment of the following services recommended by Ms Stegent as not authorized by any of Claimant's treating physicians: housekeeper, lawn/maintenance, roadside assistance, mobile phone, gym membership.

B. Medical Benefits: Reasonableness and Necessity of Medical Treatment

Section 7(a) of the Act provides that "the employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a). The Board has interpreted this provision to require an employer to pay all reasonable and necessary medical expenses arising from a workplace injury. *Dupre v. Cape Romaine Contractors, Inc.*, 23 BRBS 86 (1989).

The presumptions of Section 20 apply in a determination of the necessity and the reasonableness of medical treatment. 33 U.S.C. § 920 (stating that it shall be presumed in the absence of substantial evidence to the contrary - (a) That the claim comes within the provisions of this chapter. . ."); **Amos v. Director, OWCP**, 153 F.3d 1051, 1054 (9th Cir. 1998), *amended by* 164 F.3d 480 (9th Cir. 1999), *cert denied*, 528 U.S. 809 (1999)(finding a difference of opinion among physicians concerning treatment and deciding the issue based on the whole record); **Turner v. Chesapeake & Potomac Tel. Co.**, 16 BRBS 255, 257-58 (1984). *Cf. Schoen v. United States Chamber of Commerce*, 30 BRBS 112, 113-14 (1996)(finding that the Section 20(a) presumption did not apply in determining whether the charges incurred for self procured reasonable and necessary medical treatment were reasonable, and a claimant has the burden of proving the elements of the claim for medical benefits). Under the Administrative Procedures Act, however, a claimant has the ultimate burden of persuasion by a preponderance of the evidence. **Greenwich Collieries**, 512 U.S. at 281. The Section 20 presumptions were left untouched by **Greenwich Collieries**. *Id.* at 280. Accordingly, once a claimant has established a *prima facie* case that medical treatment is reasonable and necessary, the employer must produce contrary evidence, and if that evidence is sufficiently substantial, the presumption dissolves and claimant is left with the ultimate burden of persuasion. **American Grain Trimmers, Inc. v. Director, OWCP**, 181 F.3d 810, 816-17 (7th Cir. 1999). Thus, the burden that shifts to the employer is the burden of production only. *Id.* at 81.

A claimant establishes a *prima facie* case when a qualified physician indicates that treatment is necessary for a work-related condition. **Romeike v. Kaiser Shipyards**, 22 BRBS 57, 60 (1989); **Pirozzi v. Todd Shipyards Corp.**, 21 BRBS 294, 296 (1988).

Once a claimant establishes a *prima facie* case, the employer bears the burden of showing by substantial evidence that the proposed treatment is neither reasonable nor necessary. **Salusky v. Army Air Force Exchange Service**, 3 BRBS 22, 26 (1975)(stating that any question about the reasonableness or necessity of medical treatment must be raised by the complaining party before the ALJ). The Fifth Circuit uses a substantial evidence test in determining if an employer presented sufficient evidence to overcome a Section 20 presumption. *See Conoco, Inc., v. Director, OWCP*, 194 F.3d 684, 687-88 (5th Cir. 1999)(stating that "[o]nce the presumption in Section [20] is invoked, the burden shifts to the employer to rebut it through facts - not mere speculation - that the harm was not work-related.")(citing **Bridier v. Alabama Dry Dock & Shipbuilding Corp.**, 29 BRBS 84 (1995)); **Hampton v. Bethlehem Steel Corp.**, 24 BRBS 141, 144 (1990); **Smith v. Sealand Terminal**, 14 BRBS 844 (1982). The Fifth Circuit further elaborated on the substantial evidence test in the context of causation:

. . . [T]he employer [is] required to present *substantial evidence* that the injury was not caused by the employment. When an employer offers sufficient evidence to rebut the presumption--the kind of evidence a reasonable mind might accept as adequate to support a conclusion-- only then is the presumption overcome; once the presumption is rebutted it no longer affects the outcome of the case.

Noble Drilling v. Drake, 795 F.2d 478, 481 (5th Cir. /1986)(emphasis in original). See also, ***Conoco, Inc.***, 194 F.3d at 690 (stating that the hurdle is far lower than a ruling out standard).

Once the employer offers sufficient evidence to rebut the Section 20 presumption, the claimant must establish entitlement to the medical procedure based on the record as a whole. See ***Noble Drilling Co.*** 795 F.2d at 481 . If, based on the record, the evidence is evenly balanced, then the employer must prevail. ***Greenwich Collieries***, 512 U.S. at 281. The opinion of a treating physician is entitled to special weight. ***Brown v. National Steel & Shipbuilding Co.***, 34 BRBS 195, 201 n.6 (2001); ***Cf. Consolidation Coal Co. v. Director, OWCP***, 54 F.3d 434, 438 (7th Cir. 1995)(disparaging a “mechanical determination” favoring a treating physician when the evidence is equally weighted). An ALJ may credit the report of a treating physician over others as long as there is substantial evidence in the record to support such a conclusion. ***Ceres Marine Terminal v. Hinton***, 243 F.3d 222, 225 (5th Cir. 2001).

In the present case Employer contests only the payment of services by Claimant’s wife and the additional services of home health attendant, housekeeper, lawn/maintenance, roadside assistance, mobile phone and gym membership recommended by Ms. Stegent. Contrary to Employer I find that Dr. Lobb’s testimony at CX-111 pp. 36,37 does not negate the need for a home health attendant but only such an attendant on a 24 hour basis. Rather I find, as Ms. Stegent testified, a need for home health attendant up to 4 hours per day. The rate to be paid is \$10.00 per hour and not \$25.00 to \$30.00 as suggested by Claimant in accord with ***Carroll, supra***. Moreover Claimant should provide documentation for hours claimed and pay only for those times Ms. Hall provided medical services following Claimant’s discharge from the hospital. Those medical services included not only routine home health services such as bathing and dressing but wound care and catheterization which should have been performed by an LPN.

Employer is not required to pay for a housekeeper, lawn maintenance, roadside assistance, mobile phone and gym membership until such time as Claimant’s treating physicians so specify.

C. Interest

Although not specifically authorized in the Act, it has been an accepted practice that interest at the rate of six per cent per annum is assessed on all past due compensation payments. *Avallone v. Todd Shipyards Corp.*, 10 BRBS 724 (1974). The Benefits Review Board and the Federal Courts have previously upheld interest awards on past due benefits to insure that the employee receives the full amount of compensation due. *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, *aff'd in pertinent part and rev'd on other grounds*, *sub nom. Newport News v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979). The Board concluded that inflationary trends in our economy have rendered a fixed six per cent rate no longer appropriate to further the purpose of making Claimant whole, and held that "...the fixed per cent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This order incorporates by reference this statute and provides for its specific administrative application by the District Director. *See Grant v. Portland Stevedoring Company, et al.*, 17 BRBS 20 (1985). The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director. Interest shall be assessed on sums owed for medical services whether the cost were initially borne by claimant, other medical providers.

D. Attorney Fees

No award of attorney's fees for services to the Claimant is made herein since no application for fees has been made by the Claimant's counsel. Counsel is hereby allowed thirty (30) days from the date of service of this decision to submit an application for attorney's fees. A service sheet showing that service has been made on all parties, including the Claimant, must accompany the petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto. The Act prohibits the charging of a fee in the absence of an approved application.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and upon the entire record, I enter the following Order:

1. Employer shall pay to Claimant temporary total disability compensation pursuant to Section 908(b) of the Act for the period from November 30, 2004 to present and continuing based on an average weekly wage of \$ 739.22, and a corresponding compensation rate of \$492.81.

2. Employer shall pay Claimant for past and future reasonable medical care and treatment arising out of his work-related illness pursuant to Section 7(a) of the Act including the following; (1) part time home health care attendant up to 4 hours per day; (2) prescriptions not paid for by Employer/Carrier; (3) cochlear implants and external devices by and through Dr. Coker; (4) vestibular rehabilitation as recommended by Dr. Coker; (5) ophthalmologist referral as recommended by Dr. Coker for evaluation of 3rd nerve palsy; (6) urological examinations and treatment by Dr. Young; (7) continued physical rehabilitation; (8) mileage payments for medical care claimant has obtained in Houston; (9) payment for disposable incontinence undergarments Claimant must have in order not to soil himself; (10) reimbursement to the group health care carriers for medical care they paid for at Kindred Hospital, St. Joseph's Rehabilitation Center, Methodist and other health care providers; (11) payment of outstanding medical bills plus interest related to his work related illness as described above. Additionally Employer shall pay Claimant for the medical services rendered to him by Ms. Hall at the rate of \$10.00 per hour up to 4 hours per day after his discharge from the hospital. To assist Employer in making such payments Claimant will provide appropriate documentation for the hours claimed.

3. Employer shall pay Claimant interest on accrued unpaid compensation benefits. The applicable rate of interest shall be calculated immediately prior to the date of judgment in accordance with 28 U.S.C. §1961.

4. Claimant's counsel shall have thirty (30) days to file a fully supported fee application with the Office of Administrative Law Judges, serving a copy thereof on Claimant and opposing counsel who shall have twenty (20) days to file any objection thereto.

So ORDERED.

A

CLEMENT J. KENNINGTON
Administrative Law Judge